

2/24/1997

MEMORANDUM OF AGREEMENT

ON

OIL POLLUTION PREVENTION AND RESPONSE

BETWEEN

THE COMMANDER, ELEVENTH COAST GUARD DISTRICT

AND

THE STATE OF CALIFORNIA

WHEREAS, Congress enacted the Oil Pollution Act of 1990 (OPA 90) to protect the waters of the United States from oil pollution and to plan for the effective and immediate response in the event of an oil spill, and the President subsequently designated the Coast Guard as the Federal On Scene Coordinator (OSC) within the California coastal zone; and

WHEREAS, Congress has decided in a number of enactments, including OPA 90, not to preempt the various States from regulating certain matters associated with the protection of waters within their jurisdiction from oil pollution, which matters are also subject to regulation by the Coast Guard under OPA 90 and other statutes; and

WHEREAS, Congress explicitly provided that the provisions of OPA 90 do not: (1) preempt or affect the authority of any state to impose additional liability or requirements respecting oil discharges or other oil pollution within such a state or removal activities in connection with such a discharge; (2) affect the authority of any state to establish or continue to fund, any purpose of which, is to pay for oil pollution or the substantial threat of oil pollution costs or damages, or to require any person to contribute to such a fund; or (3) affect the authority of any state to impose any fine or penalty for violation of law relating to a discharge; and

WHEREAS, the State of California has enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act of 1990, hereinafter referred to as the California Act, to protect the waters of the State from oil pollution and to plan for the effective and immediate response, removal, abatement, and cleanup in the event of an oil spill and to augment State authority for the prevention and response to spills in waters under the jurisdiction of the State; and

WHEREAS, the California Act provides that the Administrator of the Office of Oil Spill Prevention and Response (OSPR) is appointed by and acts at the direction of the Governor. The Administrator acts as chairperson of the State Interagency Oil

Spill Committee (SIOSC) and coordinates actions through the State committee and review subcommittee; and

WHEREAS, the Administrator, subject to the Governor, and through the Department of Fish and Game, has the primary State authority to direct prevention, removal, abatement, response containment and cleanup efforts, with regard to all aspects of any oil spill in the State waters, in accordance with any applicable marine facility or vessel contingency plan, and the State Oil Spill Contingency Plan; and

WHEREAS, the State Lands Commission has the primary State authority to adopt rules, regulation, guidelines and commission leasing policies for reviewing the location, type, character, performance standards, size, and operation of all marine facilities on lands leased from the Commission and all existing and proposed marine terminals within the State; and

WHEREAS, the Commander, Eleventh Coast Guard District is the senior Coast Guard officer within the State of California, exercising Federal authority under the Oil Pollution Act of 1990 and other Federal laws with respect to oil pollution planning and response in waters subject to the jurisdiction of the United States in and outside the State of California and matters dealing with areas of vessel manning and safety equipage; and

WHEREAS, marine oil spills require a rapid, efficient, and coordinated response and cleanup by Federal, State, and local agencies as well as from private entities to minimize the deleterious effects on human, wildlife, and other natural resources; and

WHEREAS, both the Coast Guard and the State recognize the critical roles each has within their respective areas of authority in preventing oil spills and in planning for and responding to oil spills; and

WHEREAS, the Parties recognize the cooperation between them in the implementation and exercise of their respective statutory and regulatory authority is essential to avoid conflict and unnecessary duplication; and

WHEREAS, the Parties believe and intend that by acting in a cooperative and coordinated manner, the effect will be a synergistically enhanced oil spill prevention and response effort in the State of California;

NOW THEREFORE, the Parties agree, to the extent permitted by law, and as consistent with their respective policies and available resources, to cooperate and to coordinate their efforts in implementing and exercising their respective statutory and regulatory duties related to oil spill prevention and response.

I

PARTIES

The Parties to this Memorandum of Agreement are the Eleventh Coast Guard District ("Coast Guard") and the State of California ("State").

II

PURPOSE OF THE AGREEMENT

The purpose of this Memorandum of Agreement (MOA) is to ensure the Parties exercise their respective authorities regarding oil spill prevention, planning, and response in a manner so as to avoid unnecessary duplication and conflict and to ensure best achievable protection from the impact of pollution incidents for the navigable waters of the United States which are within or may impact the State waters of California; subject to each Party's statutory, regulatory, and policy requirements.

III

DEFINITIONS

Except where otherwise specifically defined in the context of its use herein, or where specifically set forth below, terms used in this Memorandum of Agreement (MOA) shall have the meaning as set forth in Federal law and applicable State law.

A. Specific definitions:

1. State Waters: Federal regulations designate the Coast Guard as the Federal On Scene Coordinator (OSC) within the California coastal zone. The Environmental Protection Agency (EPA) is the OSC for oil spills within the inland zone. The jurisdictional boundary between these zones is specified in the Federal Region IX Regional Response Team Contingency Plan. The term "State waters" shall mean those navigable waters of the United States which lie within the jurisdiction of the State of California and over which the Coast Guard has concurrent Federal authority for oil spill response.

2. Marine Oil Spill Contingency Plan: The Marine Oil Spill Contingency Plan is an addendum to the State Oil Spill Contingency Plan, which in turn is a part of the State Hazardous Materials Incident Contingency Plan. Under this scheme the Department of Fish and Game Director is the State Incident Commander for inland oil spills and the Administrator of OSPR is the State Incident Commander for marine oil spills.

IV

INFORMATION SHARING

The exchange of information between the Federal government and the State relative to historic pollution events and current risks is necessary to develop appropriate prevention and response systems. Both Parties maintain information systems that are relevant to both historical and real-time incidents. The Parties require the fullest degree of information sharing from available and pertinent data bases in order to make accurate and timely decisions to prevent and or respond to oil pollution. Transmissions of information shall be in accordance with procedures adopted by the Parties for that purpose.

A. Action:

1. The Parties agree to share information on Prevention Through People (PTP) programs sponsored by Coast Guard, or other human factor initiatives that either party may undertake.

2. The Eleventh Coast Guard District will advise the State of information it receives of the following events occurring in the navigable waters, or that may impact the State, involving vessel disablings, collisions, groundings, explosions, rammings, allisions, distress and other events when oil pollution or substantial threat of oil pollution results. The State will ensure that its emergency notification systems report these incidents to the Coast Guard.

3. The Parties agree to identify and share existing data bases, including the Marine Safety Information System (MSIS), and work toward developing risk management programs that provide risk data sharing for vessels and access by both parties to all data, subject to the requirements of applicable law, regulation, and policy, in a manner to conserve and leverage agency resources.

4. Initiatives taken to limit the introduction on non-indigenous aquatic nuisance species into State waters will be sought through appropriate State or federal regulation. Information concerning aquatic nuisance species programs shall be shared by the Parties as appropriate.

5. The Parties agree, subject to limitations imposed by applicable law or regulations, to share information from relevant studies.

OIL SPILL RESPONSE PREPAREDNESS

The National Contingency Plan (NCP) establishes the response organization within the United States and requires tiered contingency planning efforts. The State, consistent with the NCP, defines its response organization through the State Hazardous Material Plan and addenda to the Oil Spill Contingency Plan.

A. Planning Documents

1. National Oil and Hazardous Substances Pollution Contingency Plan ("National Contingency Plan - NCP"):

The Environmental Protection Agency (EPA) is the lead agency in drafting, and the Coast Guard and EPA are jointly responsible for implementing, the NCP which governs actions concerning spill response and cleanup for Federal, State, local agencies, responsible parties, clean-up contractors and others participating in such actions in United States waters.

a. Action: The State will work with the Coast Guard to ensure State plans and policies for marine environmental protection are consistent with the NCP.

2. State Hazardous Material Incident Contingency Plan and the State Oil Spill Contingency Plan:

The State Office of Emergency Services (OES) is responsible for developing and maintaining the Statewide Contingency Plan that details State responsibilities, policies, and actions governing response to spills in waters of the State. The OSPR has specific statutory authority and responsibility concerning oil spills.

a. Action: The Coast Guard will consult with the State to ensure State plans and policies for marine environmental protection are consistent with the NCP.

3. Area Contingency Plan:

The Area Committees, established by the President under the authority of the Oil Pollution Act of 1990, are responsible for the development of Area Contingency Plans for those Areas under the direction of the Federal On Scene Coordinator (OSC). The Area Contingency Plans describe the responsibilities of owners, operators and Federal, State and local agencies in responding to oil spills or threats of spills, list equipment and personnel available to respond, describe procedures for the use of dispersants and describe how the Area Contingency Plan integrates with other plans.

Area Contingency Plans are adopted by amendments to the State Contingency Plan to facilitate and coordinate on-going work with local municipalities and coastal counties. Through the OSPR Local Grant Program, municipal and county governments are also included in State and Federal planning documents. The objective is to create consistency between the local, State, and national contingency plans.

a. Action: The Parties agree to consult with each other to enhance contingency planning and to ensure that the Area Contingency Plans and Statewide Master Plan are consonant and uniform, subject to the requirements of existing law.

4. Facility Oil Spill Response Plans:

Facility Oil Spill Response Plans are required by both Federal and State law. These plans describe facility capabilities to prevent and respond to pollution emergencies. The State and the Coast Guard will coordinate with the Department of Transportation (DOT), Mineral Management Service (MMS), and the Environmental Protection Agency (EPA) in assessing facility contingency plans.

a. Action:

(i) Subject to the requirements of applicable law, regulations and policy, the Parties will develop a system to coordinate, to the extent practicable, the Parties' cooperative review and approval of facility contingency plans. The Parties agree to conduct reviews of facility contingency plans in as much of a coordinated and non-duplicative manner as is permitted by applicable laws, regulations and procedures.

(ii) The Coast Guard and the State will cooperate to ensure that requirements for facility response plans are compatible and do not conflict. The Parties will work together to determine the feasibility of the Coast Guard accepting State review of facility contingency plans, subject to Coast Guard oversight.

5. Vessel Oil Spill Response Plans:

Vessel oil spill response plans are required by both Federal and State law. These plans describe vessel capabilities to prevent and respond to pollution emergencies.

a. Action:

(i) Although the Parties recognize the need to independently review vessel plans for compliance with their respective laws and regulations, the Parties agree to conduct reviews of vessel contingency plans in as much of a coordinated and non-duplicative manner as permitted by applicable laws, regulations and procedures.

(ii) The State shall accept to the maximum extent practicable the Federal vessel contingency plan requirements and shall prepare supplementary forms for parties to comply with State requirements in areas such as preventive measures which are in addition to Federal requirements.

(iii) The Parties will cooperate to ensure that requirements for vessel contingency plans are compatible and do not conflict. The Parties will work together to determine the feasibility of the Coast Guard accepting State review of vessel contingency plans, subject to Coast Guard oversight.

B. Government Committees

The National Contingency Plan (NCP) directs the organization of government committees to prevent and respond to pollution emergencies.

1. Regional Response Team:

The Region IX - Regional Response Team (RRT) is established as a coordinating committee by the NCP and includes the State along with the Federal agencies with pollution prevention and pollution response responsibilities.

a. Action: The Parties agree to jointly participate as members of the Regional Response Team (RRT). RRT participation includes both attending regularly scheduled meetings and responding during incident specific RRT mobilization.

2. Area Committees:

Area Committees were established by OPA 90 to maximize State and local participation in contingency planning.

a. Action: The Parties agree to coordinate local response planning by jointly participating in the Area Committee planning process. Both Parties are strongly committed to participating in Area Committee Plan development and the use of the Area Committees in conducting exercises and drills, consistent with the provisions of the NCP and applicable State contingency plan.

3. Mexico/United States Pact (MEXUSPAC) Joint Regional Response Team:

The MEXUSPAC Joint Regional Response Team (JRRT) is established in accordance with the NCP to prepare for and respond to pollution emergencies that may impact the international border area between the United States and Mexico on the Pacific coast.

a. Action: The Coast Guard will advise the State of all agreements, plans, and standard operating procedures (SOP) developed to coordinate pollution response with Mexico. During

an incident specific mobilization of the MEXUSPAC JRRT, the State will be represented through the State RRT representative who will be from the Department of Fish and Game.

4. State Interagency Oil Spill Committee (SIOSC): SIOSC is responsible for coordinating oil spill prevention, response, planning and policy at the State level.

a. Action: The Coast Guard is invited to provide input and recommendations to the SIOSC.

5. State Harbor Safety Committees: State Harbor Safety Committees are responsible to evaluate and recommend ways to improve the safety of navigation in harbors and harbor approaches.

a. Action: The Coast Guard is invited to provide input and recommendations to the Harbor Safety Committees.

C. Drills and Exercises:

Drills and exercises are required by both Parties to ensure the readiness and interoperability of pollution response organizations. It is the intention of the Parties to encourage coordination, participation, and cross-training in periodic drills and exercises to facilitate a better understanding of each Party's duties and responsibilities as well as to ensure a combined, effective, familiar working relationship at oil spill incidents.

a. Action:

(i) The Parties agree to interact in the planning, scheduling, design, conduct and evaluation of exercises as time and resources permit. In this context, the Parties recognize the role of the National Strike Force Coordination Center, as the focal point for exercise strategy for all elements of the National Response System, in scheduling, designing, executing, evaluating and providing feedback on all National Response System PREP exercises in conjunction with the appropriate RRT and Area Committees.

(ii) The Parties agree to make available, as time and resources permit, any published annual reports as required by OPA 90 and State statutes concerning evaluations of drills and recommended changes to the National and Area Contingency Plans.

D. Certification of Oil Spill Response Organizations:

Both Parties evaluate, categorize, and certify oil spill response organizations.

1. Action:

a. The Coast Guard and the State will cooperate to the maximum extent practicable to evaluate, categorize, and certify oil spill response organizations. The Parties will develop joint certification guidelines and conduct independent or joint reviews as necessary or desirable.

b. The State shall accept to the maximum extent practicable the Federal compliance documents for Federal certification and shall prepare supplementary forms for compliance with State regulations.

VI

PREVENTION OF OIL SPILLS

A. Cooperative Implementation:

The Parties are coordinating their efforts to prevent oil spills in the marine environment.

1. Action: To the extent permitted under applicable laws, the Parties agree to cooperate in the execution of their respective regulatory responsibilities, to minimize duplication of effort, and to identify opportunities for innovative implementation of casualty prevention plans. Both Parties recognize the importance to encouraging cross-training in each other's regulations and rules including the areas of inspection and response. Each Party must exercise its own rulemaking implementation responsibilities independently and in accordance with applicable rulemaking procedures. Federal inspection requirements associated with vessel safety are not subject to supplemental State regulation.

B. Vessel Inspections:

Each Party recognizes that the other must independently exercise its respective examination responsibilities in accordance with applicable law, regulations and policies. The Coast Guard conducts inspection programs for the purpose of enforcing both international agreements and domestic law aboard United States and foreign flagged vessels. The State, under the California Act, is required to evaluate that inspection process and make recommendations for improvement.

1. Action:

a. The Parties agree to work together to avoid inconsistent requirements and to find ways to conduct vessel inspections in such a way that disruption to the industry is minimized and efficiency and safety maximized.

b. In implementing any State examination programs, the State agrees to avoid conflicts and unnecessary duplication in reviewing Federal inspection programs by on-going consultation with the Coast Guard.

c. Review of inspection records: The Parties agree to make inspection records available to the other and to cooperatively review inspection results, subject to applicable laws, regulations, and procedures.

d. The State shall report to the responsible officer in charge, marine inspection (OCMI), recognized discrepancies in meeting the requirements of international agreements believed to exist aboard United States and foreign flagged vessels.

e. Requirements in State Waters: The Parties will cooperate to establish consistent pollution prevention requirements, and to cooperatively monitor, examine and exchange information relative to those requirements, for vessels to operate in State waters.

f. The State will promptly inform the cognizant OCMI, and the Coast Guard will promptly inform the Administrator or his designee, of any situation or circumstance relative to a vessel whose condition or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety or the safety of navigation within State waters.

g. The Parties agree to share all applicable information obtained from their respective vessel inspections and examinations.

C. Vessel Screening:

The Coast Guard, under Federal law, through the District Commander and the Captain of the Port (COTP), has the authority to regulate the entry of vessels, including those determined to be a threat to the environment. The State may establish the means by which it can determine whether tank vessels entering the State waters pose a substantial risk of harm to public health and safety and the environment.

1. Action: When the State determines that a particular vessel or vessels pose a substantial risk, that determination will be forwarded to the cognizant Captain of the Port (COTP). The COTP shall consider that information in making a determination under Federal law as to appropriate action to be taken, if any, including the possibility of denial of entry.

D. Tank Vessel Equipment:

The Coast Guard conducts inspections and examinations to ensure compliance with requirements for equipment to ensure safety of life at sea aboard vessels. The California Act authorizes the Administrator to conduct vessel inspections. Both Parties conduct examinations to ensure compliance with requirements for pollution prevention and pollution response equipment.

1. Action: The Parties will cooperatively examine pollution prevention and pollution response equipment aboard vessels and report noncompliance to the other Party.

E. Tank Vessel Manning:

The Coast Guard establishes and enforces requirements for manning, competence, and documentation of personnel aboard tank vessels.

1. Action:

a. The State will assist the Coast Guard to evaluate and coordinate additional requirements for manning, training, and qualification requirements through the manning standards process.

b. The Parties agree to actively promote and coordinate research projects, such as PTP, to identify human factors which need to be regulated to prevent pollution incidents.

F. Tank Vessel Transfer Operations:

Monitoring tank vessel transfer operations has been identified as an effective pollution prevention action.

1. Action:

a. The Parties will cooperate to monitor transfer operations aboard tank vessels, including, but not limited to, dockside transfers at facilities and lightering and bunkering operations. The Coast Guard acting through the Marine Safety Offices (MSO's) and the State agree to cooperate in the scheduling of monitoring vessel transfer operations to make best use of limited resources and avoid redundant oversight and disruptions to industry. Each Party will advise the other of violations observed.

b. The Parties will cooperatively monitor and examine pollution prevention and pollution response equipment during

transfer operations. Each Party will advise the other of violations observed.

c. The Parties agree to make transfer monitor records available to each other and to cooperatively review monitoring results, subject to applicable laws, regulations and procedures.

G. MARPOL 73/78

MARPOL 73/78 is the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto:

MARPOL 73/78 is an international agreement implemented to reduce pollution from vessels.

1. Action: The Parties will cooperate in the enforcement of existing MARPOL requirements. The Coast Guard will keep the State informed concerning MARPOL regulations, and both Parties will work together to develop disposal services adequate to support port operations.

H. Facility Inspections:

Facility inspections are conducted by both Parties to ensure compliance with pollution prevention and pollution response regulations. The State has statutory responsibility for oil transfer facilities and their operation within the State. Included in this responsibility is the requirement to establish regulation and inspection programs governing oil transfer facilities. This includes regulation and inspection of oil transfer operations between marine facilities and tank vessels.

1. Action:

a. Facility Inspection: The Parties will coordinate their respective inspection and monitoring activities to the extent practicable to utilize the resources of both Parties efficiently and effectively. Cognizant inspectors from both Parties may carry out inspections and other activities jointly where appropriate.

b. Equipment: The Parties will cooperatively enforce requirements for pollution prevention and pollution response equipment at marine facilities.

c. Manning: The Parties will cooperatively enforce requirements for trained and qualified personnel to be responsible for transfer operations at marine facilities.

d. MARPOL Reception Facilities: The Parties will work together to ensure adequate facilities are present to receive garbage, sewage, and oily wastes from vessels.

e. The State will promptly inform the COTP, and the USCG will promptly inform the State, of any situation or circumstance relative to facilities whose operation or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety, or the safety of navigation within State waters.

I. Waterways Management:

1. Port and Waterways Safety

The Captain of the Port (COTP) is the predesignated Federal official with primary responsibility to exercise control of vessels to ensure the safety and security of ports and waterways. Under the California Act, Harbor Safety Committees are created and are responsible for the planning of safe navigation and operation of tankers, barges, and other vessels in harbors and harbor approaches.

a. Action

(i) The State will promptly inform the COTP, and the Coast Guard will promptly inform the appropriate State authority, of any situation or circumstance relative to vessels whose operation or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety, or the safety of navigation within State waters.

(ii) The State is guided by recommendations from the Harbor Safety Committee for the planning of safe navigation and operation of tankers, barges and other vessels within each harbor. The State, in adopting regulations to implement the Harbor Safety Plan will coordinate with the COTP.

2. Vessel Traffic Services (VTS)

The Ports and Waterways Safety Act authorizes the Coast Guard to construct, operate and maintain vessel traffic services in the areas subject to the jurisdiction of the United States. The Federal system of VTS is designed and empowered to inform, advise, and direct marine traffic in designated areas. Federal VTSs require the participation of certain classes of vessels and may direct the movement of those vessels to reduce navigational risks.

In 1991, the Coast Guard completed a VTS Ports Needs Study to determine which United States ports would gain the most benefit from the presence of a Federal VTS. The California ports and waterways included in the Port Needs Study were Los Angeles/Long Beach, Santa Barbara Channel and the ports in and around San Francisco Bay.

a. Action:

(i) The Coast Guard maintains a Federal VTS in San Francisco Bay. The State will cooperate with the Coast Guard to ensure expansion of the existing VTS system within San Francisco, San Pablo, Suisun Bays as well as the Gulf of the Farallones.

(ii). A Vessel Traffic Information System (VTIS) for Los Angeles/Long Beach is maintained under a joint partnership between the Marine Exchange, the State and the Coast Guard.

3. Pilots

Federal law requires pilots aboard vessels sailing within the coastwise trade. Foreign vessels or United States vessels engaged in foreign trade may be controlled by State pilotage requirements. In the absence of State pilotage regulations, the Federal government may impose pilotage requirements on those vessels.

a. Action: The Coast Guard and the State intend to enter into a memorandum of agreement with California's port and harbor authorities for the purpose of creating a state pilotage system ; except for the port and harbor authorities falling under pilotage jurisdiction of the Board of Pilot Commissioners for San Francisco, San Pablo and Suisun Bays, where the Coast Guard recognizes the State regulation of pilotage.

4. Tug Escorts

Federal and State law authorize the regulation of the use of tug escorts and may require either equipment or standards of performance deemed necessary for the function.

a. Action:

(i) The State and the Coast Guard agree to consult with each other in issuing any regulations requiring tug escorts to ensure that they are consistent to the extent permitted by law.

(ii) Towing Equipment: The Parties agree to review requirements for tow equipment for barges and tank vessels carrying oil in bulk, with the purpose of determining whether additional standards for equipment, maintenance, operation, and inspection should be adopted.

5. Aids to Navigation (ATON)

The Coast Guard establishes, regulates, and maintains a uniform system of aids to navigation within the United States.

a. Action: The State will assist the Coast Guard by recommending changes, improvements, or repairs that may improve

aids to navigation, in cooperation with the Harbor Safety Committees.

J. Public Information/Education

The Parties agree that public education in areas of pollution prevention, which includes oil, hazardous substances and garbage, is a high priority and that each agency shall seek opportunities to coordinate pollution prevention public awareness and education programs.

1. Action:

a. Marinas: Public information and education will be cooperatively developed and implemented targeting marina operations to reduce pollution from oil, toxic substances, garbage, and sewage.

b. Small Oil Transfer Facilities: Public information and education will be cooperatively developed and implemented targeting small oil transfer facilities to reduce pollution from oil, toxic substances, garbage, and sewage.

c. Recreational Vessels: Public information and education will be cooperatively developed and implemented targeting the recreational boating community to reduce pollution from oil, toxic substances, garbage, and sewage.

VII

RESPONSE

Federal law established the Coast Guard as the primary Federal agency tasked with responding to oil spills on the navigable waters of the United States. In such cases, the Federal On Scene Coordinator (OSC) is the predesignated official responsible for directing response actions. The OSC may direct or monitor all Federal, State, and private actions in response to an oil spill or a potential oil spill in State waters. The Parties will respond to marine oil spills as required by and in accordance with the National Contingency Plan (NCP). The OSC will consult, as required by OPA 90 and other applicable Federal law, with the OSPR Administrator or designee concerning oil spill response activities. State law provides that OSPR is responsible for coordinating State oil spill cleanup efforts.

A. Notification: The Parties agree to provide the earliest possible notification of discharges of oil and hazardous substances and imminent threats of such discharges to each other in accordance with applicable law, regulations and policies consistent with the National Oil and Hazardous Substances Pollution Contingency Plan and applicable area contingency plans. In order to provide a single point of contact for the OSC in the event of a marine oil spill, the OSPR Administrator or designee

will represent all State agencies and will be the primary point of contact.

B. Incident Command System (ICS)/Unified Command Structures (UCS):

The Incident Command System (ICS)/Unified Command Structure (UCS) establishes functional responsibilities, lines of communication, information sharing and control for the conduct of an oil spill response operation.

1. Action:

a. The Parties agree to work together within the framework of their respective authorities to ensure a coordinated effort with a minimum of duplication in response to oil spills.

b. The Parties agree to implement an ICS/UCS to ensure coordination of emergency response decision-making during a pollution incident. In those circumstances where governmental action is required to develop and direct action to clean up or abate the effects of an oil spill, the Parties agree to consider best utilization of existing resources, avoiding duplication, while taking advantage of resource availability. The OSC may request the State to undertake response actions on a case-by-case basis. If the State assumes responsibility for response activity, the State will conduct those activities, as directed by the OSC, in accordance with the National Contingency and Area Contingency Plans.

c. Response Decisions: The OSC will coordinate with the State in decision-making relating to the conduct of oil spill response operations including, but not limited to: salvage, lightering, safe haven and other matters affecting the discharge of spilled oil, its containment or its cleanup.

d. The Parties agree to establish a joint public information center to provide for the coordinated dissemination of information during a response operation. This provision does not preclude the Parties from making independent responses to the media and the public.

C. Natural Resource Protection

Both Parties recognize the importance of protecting and preserving natural resources in responding to an oil spill. Both Parties agree that response strategies and procedures will be established through the Unified Command Structure (UCS), in accordance with applicable laws, regulations, and policies, and procedures. The Area Contingency Plan (ACP) will be used as the primary guidance document regarding resource protection.

D. Response Monitoring and Technology

Both Parties agree that the methods used to clean up oil and oily debris shall be established through the Incident Command System (ICS)/UCS which will determine the level of action which is required.

1. Action:

a. Both Parties agree, through the Incident Command System, to provide timely input and recommendations to the Unified Command, to the extent practicable, on dispersant usage, in situ burning, bioremediation, and other non-mechanical cleanup technologies.

b. Both Parties agree that decisions to discontinue clean up operations and demobilize response activities shall be made through the Unified Command Structure. The State retains the right to undertake response, remedial or mitigating actions beyond the response actions completed by the OSC.

E. Incident Command System (ICS) Training

Both Parties acknowledge the necessity for increased and ongoing training in ICS procedures to maintain a qualified pool of response personnel.

1. Action:

a. Both Parties agree to establish training criteria appropriate to their agencies.

b. Both Parties agree to pursue joint training opportunities and instruction.

c. To better prepare for an oil spill where a responsible party is not present or not identified, the State and each COTP shall prepare an action plan for, and exercise the Incident Command System. Such action plans shall be reviewed, updated, and exercised as needed.

VIII

NATIONAL POLLUTION FUNDS CENTER INFORMATION

A. The Oil Spill Liability Trust Fund (The Fund).

The Fund provides funding under certain conditions for oil discharge removal actions. The Fund is available in certain circumstances to compensate the State for incurred costs and damages associated with oil discharges. To the extent allowed, a State may access the Fund under current regulations and National Pollution Fund Center (NPFC) procedures.

1. Action: Upon the publication of regulations implementing Section 1012(d)(2) of OPA 90, the State may

negotiate directly with the NPFC to establish a cooperative agreement to provide access to the Fund under Section 1012(d)(2). Any agreement between the State of California and the National Pollution Fund Center shall be attached as an annex to this MOA.

B. The National Pollution Fund Center (NPFC)

1. The NPFC administers the Oil Spill Liability Trust Fund (The Fund) in order to: provide funding for oil removal activities, provide State access to the Fund, conduct cost recovery, accept and process claims, and evaluate requests by Federal trustees to fund initiation of natural resource damage assessments. The NPFC also administers Certificates of Financial Responsibility and provides CERCLA/Superfund funding to Coast Guard On Scene Coordinators (OSC) responding to hazardous material incidents.

2. The State may receive payment from the Fund in the State's role as a response organization engaged in removal activities consistent with the National Contingency Plan, as an appropriate claimant for damages, and in the State's role as a natural resource trustee. In addition to the text herewith concerning Section 1012(d)(2) of the Oil Pollution Act of 1990 (OPA 90), the State recognizes the following provisions outline alternative funding methods for State removal activity:

a. Section 1012(d)(1). Regulations under Section 1012(d)(1) of OPA 90 allow the NPFC, upon request of the Governor of a State and as authorized by the Federal On Scene Coordinator (OSC), to obligate The Fund for payment in an amount not to exceed \$250,000 for removal costs, consistent with the National Contingency Plan (NCP), required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil. The NPFC's Technical Operating Procedures (TOPs) for State access under Section 1012(d)(1) of OPA 90, and the TOPs for resource documentation under OPA 90 are approved guidelines for State use to access the Fund under this section.

b. Claims. Regulations under Section 1012(a)(4) of OPA 90 authorize use of The Fund for the "payment of claims in accordance with Section 1013 of OPA 90 for uncompensated removal costs determined by the President [Coast Guard] to be consistent with the NCP or [for] uncompensated damages." Procedures for claims are found in 33 CFR Part 136. States have a special status under Section 1013 of OPA 90 regarding claims for uncompensated costs which allows States to make such claims directly to The Fund rather than first to the responsible party.

c. The State agrees to eliminate excessive overhead expenses associated with the cost recovery program so that only those individual claims in excess of a dollar amount to be determined through consultation with the Coast Guard and eligible for compensation shall be submitted to the Fund.

d. Working Directly for the OSC. State agencies may work directly for the On Scene Coordinator (OSC) in performing removal actions. In these situations, the OSC issues a Pollution Removal Funding Authorization (PRFA) to the State to establish a contractual relationship and to obligate The Fund. The OSC actively directs and is responsible for the response actions. The OSC may request State assistance and participation in emergency removal actions under CERCLA in response to a hazardous materials incident or threatened incident and where funding for these actions is established in a PRFA.

3. Natural Resource Damage Assessments. A State natural resource Trustee may request access to the Fund for the initiation of an assessment of natural resource damages resulting from a discharge of oil, through a Federal Lead Administrative Trustee (one of the Federal Trustees designated in the NCP), in accordance with the procedures established by the NPFC (Section 6002(b) of OPA 90).

IX

ENFORCEMENT

Enforcement action by either Party may include civil and criminal penalties. The Coast Guard may also take action against Coast Guard merchant marine licenses and seamen's documents.

A. Action:

1. Subject to the requirements and limitations of applicable State and Federal law, the Parties agree to cooperate to the fullest extent possible in marine casualty investigations and pollution investigations including, but not limited to: the sharing of information regarding witnesses, reports, analyses, and other available information, or evidence that may assist in determining the cause of the casualty or pollution incident.

2. Enforcement action undertaken by each of the Parties must occur independently in accordance with applicable laws and regulations. The Parties agree that to the extent they can, they will consult with each other as to intended enforcement action.

3. The Parties agree to investigate the feasibility of the Coast Guard utilizing the Department of Fish and Game Petroleum Chemistry Laboratory for the analysis of Coast Guard oil samples.

X

RULEMAKING

A. Issuance of Regulations

The Oil Pollution Act of 1990 and other Federal law provides for the issuance of regulations pertaining to the prevention of

oil spills from vessels. The Commandant of the Coast Guard has the authority to promulgate such regulations. The Commander, Eleventh Coast Guard District, and the respective Captains of the Port have limited authority to promulgate local regulations. Acting under its inherent regulatory authority and under authority not preempted by Federal law, the State has the authority to promulgate regulations concerning oil spill prevention which do not conflict with, and which are not otherwise preempted, by Federal law. It is the intention of the parties to maintain close communications to reduce conflict between each Party's permits, directives, and instructions.

1. Action:

a. The intent of this section is to avoid conflict and inconsistent regulation in rulemaking wherever possible, subject to applicable procedural rules, and to endeavor to provide a coordinated, synergistic response to oil pollution planning and response. It is the intent of the Parties to endeavor under their respective authorities to assure the best achievable protection for the waters of the State.

b. In addition, the respective Federal and State procedures for noticing the opportunity to comment on proposed rules, the Parties anticipate that through their participation on committees and day-to-day working communications, the concerns of each will be discussed and given due consideration.

B. Containment and cleanup for refueling, bunkering or lightering operations

OPA 90 and other Federal laws regulate refueling, bunkering and lightering operations. Federal regulations enforced by the Coast Guard govern these operations. Subject to the requirement that they be consistent with Federal regulations, the State may issue its own regulations relating to these same operations.

C. Tank Vessel Response Equipment Rules

Federal law governs the standards for response equipment. State law authorizes the adoption of State standards for spill response equipment to be maintained on tank vessels operating in waters of the State. State rules must be consistent with Federal spill response equipment standards.

XI

AGREEMENT

A. This agreement represents a voluntary understanding between the Eleventh Coast Guard District and the State of California.

B. The terms of this agreement may be changed at any time by the Parties by a written, signed amendment hereto with or without notice to any other person.

C. The agreement may be terminated by either party at any time without notice to any person other than the other party.

D. No rights, duties, obligations, or liabilities enforceable at law are created by this agreement.

E. No action based upon this agreement may be brought against the United States or the State of California by any person.

F. This agreement does not alter, modify, abridge, or in any way affect any rights, duties, obligations, or liabilities of any person under the laws of the United States or the State of California.


G. In the event that individual and severable portions of this agreement are found to be in conflict with either State or Federal law, regulations or policies, and therefore of no effect, the agreement will remain in effect without those provisions, unless either Party notifies the other in writing that the entire agreement is terminated.

H. Any action to modify, amend or terminate this agreement may only be taken by the Governor of the State of California or the Commander, Eleventh Coast Guard District or person to who this authority is specifically delegated by them.

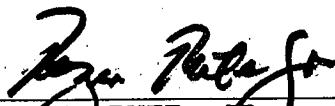
I. This MOA supercedes and replaces the MOA signed on June 2, 1993.

FOR THE STATE OF CALIFORNIA:

FOR THE UNITED STATES COAST GUARD:



PETE WILSON
Governor
State of California



R. T. RUFÉ, JR.
Vice Admiral, USCG
Commander,
Eleventh Coast Guard District

Date:

Date: